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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

CASE NO. 96-137

THE STATE OF FLORIDA,

Petitioner,

vs.

JUAN SOCA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHERE THE AUTHORITY OF A PROBATION OFFICER IN FLORIDA, AS CONSTRUED BY THE FLORIDA SUPREME COURT AS THE FINAL ARBITER OF STATE LAW, TO CONDUCT A WARRANTLESS SEARCH IS NOT OTHERWISE CONFERRED BUT ARISES ONLY FROM THE FLORIDA SUPREME COURT'S OWN PRIOR DECISION IN *GRUBBS v. STATE*, 373 So. 2d 905 (Fla. 1979), WHICH DECISION LIMITS THE RESULTS OF SUCH SEARCHES TO PROBATION REVOCATION HEARINGS ONLY, WHETHER THE HOLDING BELOW RECOGNIZING THE CONTINUING VITALITY OF SUCH STATE-LAW STRUCTURE PRESENTS ANY FEDERAL CONSTITUTIONAL ISSUE OR BASIS FOR EXERCISE OF CERTIORARI JURISDICTION?

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STATEMENT OF CASE

Not unexpectedly, the petitioner has placed undue emphasis on certain parts of the decision below, and ignored other pertinent, but jurisdictionally adverse, portions.

For nearly two decades, the State of Florida has utilized a unique, bifurcated system of probation supervision; a probation officer may conduct a warrantless, non-exigent search of a probationer without any particular quantum of justification, but the results of any warrantless probation search are admissible against the probationer only in a violation hearing, and not in a new criminal case. *Grubbs v. State*, 373 So. 2d 905, 907, 909-10 (Fla. 1979). The authority of a probation officer to conduct a warrantless search of a probationer has been held by the Florida Supreme Court, as the final authority on issues of Florida law, *see, e.g., Griffin v. Wisconsin*, 483 U.S. 868, 875-76 (1987), to be conferred *not* by statute or other provision of state law but to arise *only* from the court's own *Grubbs* holding. *Soca v. State*, 673 So. 2d 24, 28 (Fla. 1996). This structure of state law has been administratively codified. *Id.* at 26 & n.2.

A state attorney's office investigator, suspecting the defendant, who was on probation, of involvement in dealing in cocaine, and aware of the foregoing structure of state law, made, as the Florida Supreme Court found, "a conscious choice *not* to seek a warrant and instead [to] allow [a] search to be conducted pursuant to the supervisory authority granted probation supervisors in *Grubbs*." *Soca, id.* at 25. The search by probation officers (Florida Department of Corrections officers) yielded cocaine hidden in the defendant's residence, which constituted the basis for a revocation (pursuant to plea) of the defendant's probation. *Id.* The propriety of revocation was not at issue. *Id.* at 25-

26, 28.

In reversing the lower court's holding that the evidence was admissible against the defendant in a new criminal case, the Florida Supreme Court held as a matter of state law that the "probation officer's right to search is based on our holding in *Grubbs*, wherein we expressly limited the use of the fruits of such a search to probation proceedings. Accordingly, we find that the instant case is clearly distinguishable from *Griffin* [*v. Wisconsin*], and under *Grubbs*, the evidence obtained in the probationary search of Soca's trailer is not admissible against him in a new criminal proceeding." *Id.* at 28. The court noted that the Florida legislature was free to follow Wisconsin and adopt a scheme to provide for warrantless probation searches supported by "reasonable grounds." *Id.* at 28 n.3.

The court further observed:

> As this case illustrates, the *Grubbs* rule regulating probationary searches and the admissibility of evidence discovered therein has served as a workable framework for the DOC for over sixteen years, and we believe it remains a sound policy today. There has been no demonstration that our decision in *Grubbs* does not represent a proper balancing of the need to maintain supervision and control over probationers with the long-held constitutional right of each citizen to be free from searches and seizures which violate the principles of article I, section 12, of the Florida Constitution.
>
> The *Grubbs* rule gives the State considerable leeway in investigating and monitoring probationers. When the State believes that a probationer is engaging in criminal behavior, the State may choose to inform probation officials of his alleged criminal conduct and place further responsibility for investigating his conduct with those officials. Apprised of this information, the probation supervisor may exercise his or her authority to search the probationer's person or residence for

evidence that the probationer is violating the terms of his probation. Should the probation supervisor discover such evidence, it can be used against the probationer in a probation revocation proceeding.

On the other hand, the State may choose to continue its investigation and attempt to secure a warrant to search the probationer's residence in compliance with traditional search and seizure standards under article I, section 12, of the Florida Constitution. The State may also utilize the fact that the subject of its investigation is on probation as part of the circumstances establishing the probable cause necessary to secure a warrant.

Id.

REASONS FOR DENYING THE WRIT

I.

THE DECISION BELOW DOES NOT PRESENT ANY FEDERAL CONSTITUTIONAL ISSUE.

The decision below represents an affirmation by the Florida Supreme Court of the continuing vitality of its 1979 *Grubbs* decision conferring authority upon probation officers to conduct (suspicionless) warrantless searches, and providing the uses of such evidence obtained thereby. The Petitioner's attempt to interpose the Florida Constitution, Article I, Section 12 Fourth Amendment conformity clause and *Griffin v. Wisconsin* as presenting a basis for invalidation represents a significant misreading of both *Griffin* and the lower court's decision.

In *Griffin v. Wisconsin*, this Court held constitutional under the Fourth Amendment a state scheme, the question of compliance with which this Court expressly deferred to the Wisconsin Supreme Court as the final authority on issues of Wisconsin law, which authorized warrantless searches of probationers on reasonable grounds. 483 U.S. at 872-76, 880. However, authority of a probation officer in Florida to conduct a warrantless search cannot come from the mere approval in *Griffin* by this Court of the Wisconsin scheme; it must be provided as a matter of state law in the first instance. Contrary to the petitioner's attempt to bootstrap an analogy to Wisconsin, the Florida Supreme Court has held that statutory authority of a probation officer to conduct a warrantless search is *not* otherwise conferred, but arises *only* from the court's 1979 *Grubbs* decision, and the uses of evidence obtained must comport therewith, i.e., such evidence is admissible only in a

probation revocation hearing. *Soca*, 673 So. 2d at 28; *Grubbs*, 373 So. 2d at 907, 909-10. Thus, critical points of distinction between Florida and Wisconsin are that in Florida the authority to conduct a warrantless probation search at all arises only from judicial (Florida Supreme Court) decision and is limited thereby, and, further unlike Wisconsin, such a search may be suspicionless. *See, e.g., Elkins v. State*, 388 So. 2d 1314 (Fla. Dist. Ct. App. 1980); *Smith v. State*, 383 So. 2d 991 (Fla. 5th DCA 1980).

The Florida Supreme Court's mere discussion below of federal constitutional jurisprudence in the course of rejecting the petitioner's argument certainly does not convert the decision into one of federal constitutional law; to the contrary, the Florida Supreme Court was careful to consider the unique state-law source, nature and use limit of a warrantless search by a probation officer. *Soca, id.* at 27-28. This decision rests on such state-law grounds, and does not present either a sufficient or an appropriate basis for certiorari.

The petitioner's implicit awareness of the central state-law grounding of the decision below is manifested by its election to bypass rehearing below, as authorized by Florida Rule of Appellate Procedure 9.330, which allows the filing of "[a] motion for rehearing [or] clarification . . . within 15 days" of a decision, and to instead opportunistically seize upon certain language of the decision which does not actually comprise the *ratio decidendi.* The petitioner has utterly failed to address, or even acknowledge, the codification of *Grubbs* probation search authority and admissibility-limitation, which codification was also relied upon by the Florida Supreme Court, *Soca, id.* at 26 & n.2, and which would constitute an entirely separate state-law basis for the decision. Both the nature of the *Grubbs* rule, and

its codification, distinguish this case from the few circuit court of appeals cases relied on by the petitioner.

II.

EVEN IF THERE WERE A BASIS FOR GRANT OF CERTIORARI, THIS CASE IS NOT WORTHY OF SUCH REVIEW BOTH BECAUSE NO OTHER JURISDICTION UTILIZES THE BIFURCATED PROBATION SUPERVISION SCHEME EXTANT IN FLORIDA, AND BECAUSE, IF ADOPTED, THE PETITIONER'S ARGUMENT CONSTITUTES A LOGICAL CIRCULARITY WHICH WOULD RESULT IN NULLIFICATION OF ANY AUTHORITY OF A FLORIDA PROBATION OFFICER TO CONDUCT A WARRANTLESS SEARCH, OR ALTERNATIVELY, WOULD PROVIDE FOR THE SAME RESULT AS REACHED BELOW BY VIRTUE OF THE FLORIDA CODIFICATION OF THE *GRUBBS* RULE.

Florida, to the respondent's knowledge, is the only jurisdiction to utilize the carefully tailored, bifurcated scheme of probation supervision. Therefore, even if there were perceived to be a jurisdictional basis for certiorari, its exercise would affect, as far as the respondent can ascertain, no other jurisdiction in the United States. Moreover, it is extremely doubtful that even Florida would be affected, given the nature of the reasoning below. In *Griffin v. Wisconsin*, this Court held only that a regulatory scheme for authorization of warrantless probation searches upon reasonable grounds, the satisfaction of the scheme to be ascertained only by the state courts, satisfied the Fourth Amendment. *Id.* at 483 U.S. at 872-73, 880. It expressly left open the question of whether the Fourth Amendment would, in the absence of such a scheme, directly permit such warrantless searches upon reasonable grounds, *id.* at 872, 880, much less, as applicable herein to probation revocation proceedings, upon less than such grounds. *Soca, id.* at 28. The Florida Supreme Court has allowed warrantless or suspicionless searches, as a matter of supervisory authority of probationers, only upon the assumption that the results were

admissible in probation revocation proceedings alone. *Grubbs*, 373 So. 2d at 907, 909-10; *Soca*, 673 So. 2d at 28. This centrally and fatally undercuts the petitioner's facile assumption of once "lawfully" obtained, then good for all purposes. The Florida Supreme Court's conclusion of "lawfulness" of a warrantless search of a probationer by a probation officer is self-limiting and defining only with respect to revocation proceedings.

Put differently, the petitioner's argument represents a logical *ne exeat*. It seeks, under the conjunction of the Florida Constitution, Article I, Section 12 conformity clause and *Griffin v. Wisconsin*, to invalidate the Florida Supreme Court's decision in *Grubbs v. State*, but it is *Grubbs* which provides the very authority for probation officers to conduct a warrantless search at all in Florida. *Grubbs* is either of vitality or not, and, if it is, as held by the Florida Supreme Court, then there is no basis for disturbance of that court's decision. On the other hand, if *Grubbs* is not of vitality for the reasons the petitioner advances, then its nullification would remove any authority in Florida for a probation officer to conduct a warrantless search. Alternatively, nullification of *Grubbs* would leave unaffected the codification of its principle, *Soca*, *id.* at 26 & n.2, which codification would independently support (if not require) the same result as that reached below.

CONCLUSION

The decision below, and its central underpinning, *Grubbs v. State*, constitutes an exercise of the Florida Supreme Court's authority over probationers, and not a determination of federal constitutional jurisprudence. For that reason and others stated herein, the Petition for Writ of Certiorari to the Supreme Court of Florida should be denied.

Respectfully submitted,

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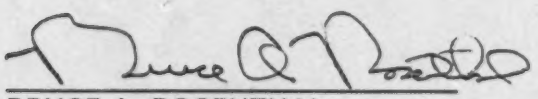

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